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Workmen's Compensation

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Descent and Distribution

The "half and half" statute, Ohio General Code Section 10503-5, which governs the descent of property which came to an intestate relict from a deceased spouse was held applicable in *National Bank of Lima v. Allen*[21] to shares of stock of which the relict wife died possessed, although the shares bequeathed to her by her husband subsequently had become the subject of a stock split. The probate court quite correctly found that the stock split and the issuance of a new certificate to the relict wife had not destroyed the identity of the stock.

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WORKMEN'S COMPENSATION

Injuries within Course of Employment

The perplexing issue of what constitutes death, injury or occupational disease occasioned in the course of employment confronted Ohio courts in several cases.

In *Eggers v. Industrial Commission*[1] claimant's decedent, while standing in the factory where he worked, suddenly fell to the floor and suffered a superficial laceration of the scalp. No evidence was submitted relating to any incident causing the fall or any unusual strain or condition upon the defendant at the time of the fall. The supreme court in denying an award to the widow held that no presumption exists that the fatal injury arose out of the worker's employment. The dissent emphasized that it was far more probable that the fall and accidental injury in a work place during working hours presumably occurred in the course of employment and that this presumption should be controlling because no evidence was given indicating a non-compensable injury like a heart attack.

The question of whether an employee was outside the zone of employment at the time of his death was raised in three Ohio cases. The court of appeals stated in *Collier v. B.F Goodrich Co.*[2] that if the claimant's decedent were killed while trespassing on a railroad on route to work no benefits can be given if the employer had provided another safer means of entrance.

However, if the employee was killed crossing a public highway on the way home after responding to an off-shift call to render specialized service, he was within the zone of employment. The employee involved lived across the public highway from the kilns he was hired to "salt down" and was on call at all times. In *Smith v. Industrial Commission*[3] the court of

[21] 104 N.E.2d 469 (Allen Probate Ct. 1952)

appeals held his work environment created this method of ingress and egress which was a peculiar hazard to his work.

On the other hand, when an accountant of the Public Utilities Commission, subject to call at all hours with no particular lunch period, returned to a private company's office to check books after lunch, he could not benefit for injuries sustained by slipping on a raised street car rail. It was held in *Scott v. Industrial Commission*[4] that no greater hazard was experienced by the claimant than by the general public.

A coal miner suffered exposure by necessity of his work surroundings. Circulatory ailment, heart ailment and arthritis directly caused by such work were injuries sustained in the course and scope of employment according to the court in *Moskell v. Industrial Commission*.[5]

The care required to draft special charges before argument defining scope of employment was emphasized in *State v. Lovely*.[6] The defendant requested that if the plaintiff were injured while operating a planing machine "which was no part of his duties" and against the express order of the employer, the defendant was not liable. This charge appeared to state as a fact that the plaintiff employee had been ordered not to operate the machine. Since that point was in issue, the charge was properly denied.

Who Is an Employee

A pilot who contracted to deliver airplanes throughout the country was considered an independent contractor in *Ruffi v. American Fly Away Service, Inc.*[7] The court of appeals stated that the company controlled only the result while the pilot controlled the method of accomplishment. A fatal injury to the pilot, therefore, did not permit death benefits since no employer-employee relationship existed.

Extent of Compensation

The extent of compensation benefits was considered by the supreme court in several cases. Section 1465-70 of the Ohio General Code was construed in *Bevis v. Armco Steel Corp.*[8] as protecting the employer from common law liability to a wife who sued for loss of consortium of her employee-husband totally disabled by silicosis.

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[1] 157 Ohio St. 70, 104 N.E.2d 681 (1952).
[2] 90 Ohio App. 181, 104 N.E.2d 600 (1950).
[3] 90 Ohio App. 481, 107 N.E.2d 220 (1948).
[4] 105 N.E.2d 881 (Ohio App. 1951).
[5] 91 Ohio App. 112, 107 N.E.2d 543 (1951).
[6] 91 Ohio App. 315, 104 N.E.2d 585 (1950).
[7] 104 N.E.2d 37 (Ohio App. 1950). The pilot also departed from possible employee status by crashing as a result of "buzzing" a fishing boat.
[8] 156 Ohio St. 295, 102 N.E.2d 444 (1951).

It was held in *State* ex rel. *Republic Rubber Division v. Morse*[9] that, although an injury does not cause death but merely accelerates it, a full award for death benefits is valid. The employee received an injury to his spine during employment which activated a brain tumor and hastened his death. Thus, the compensation rule does not follow the wrongful death action rule which permits mitigation of damages by evidence of a pre-existing diseased condition in the decedent.

The strict silicosis rule in Section 1465-68a of the Ohio General Code barred compensation for death when total disability did not occur within two years from the last exposure prior to 1945. In that year the statutory period was extended to eight years. The amendment, however, did not operate retroactively to benefit the dependent of an employee last exposed in 1942 who died in 1948, according to the court in *State* ex rel. *Bessler v. Industrial Commission.*[10] The dissent preferred to fix the dependent's benefits under the statute effective on the date of the employee's death rather than the date of employee's last exposure.[11]

Where a municipality paid an injured policeman a pension, the amount of the pension payment represented by the city's contribution should be deducted from the compensation award received by the policeman from the state. Only the excess of the award, if any, should go to the former employee. The court in *State* ex rel. *City of Columbus v. Industrial Commission*[12] thereby held that Section 1465-61 of the Ohio General Code was not impliedly repealed by Section 4628 which relates to pensions.

Premium Rates

An attack against premium rates fixed by the Industrial Commission was presented in *State* ex rel. *Gerspacher v. Coffenberry.*[13] A Cleveland taxpayer brought mandamus to compel the Commission to refund to public employers all excess monies collected over premium requirements. The supreme court in dismissing the petition stated that the Commission must be given wide area to fix rates, and their actions are presumed to be valid, entered into in good faith and in sound judgment.

Procedural Aspects

The Industrial Commission's power to modify an order on the showing of new evidence was reaffirmed in *State* ex rel. *S.S. Kresge Co. v. Industrial*

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[9] 157 Ohio St. 288, 105 N.E.2d 251 (1952).

[10] 157 Ohio St. 297, 105 N.E.2d 264 (1952).

[11] *Id.* at 307, 105 N.E.2d at 269 where Taft, J. dissented for the same reasons as were stated in his dissent to State *ex rel.* Efford v. Industrial Commission, 151 Ohio St. 109, 119, 84 N.E.2d 493, 496 (1949).

[12] 158 Ohio St. 240, 108 N.E.2d 317 (1952).

[13] 157 Ohio St. 32, 104 N.E.2d 1 (1952).

Commission,[14] while in *Gireak v. Industrial Commission*[15] a common pleas court maintained its authority to remand the rehearing record to the Commission for reopening and the taking of additional testimony in the case. No express statute was cited in the *Gireak* case but prior cases[16] had permitted remanding to correct errors in the rehearing record.

On appeal from the rehearing decision to the common pleas court it is immaterial if the Industrial Commission denied the claim on both a jurisdictional fact from which appeal is permitted and a non-jurisdictional fact from which appeal will not be allowed. Liberal construction, according to the court in *Klein v. B.F Goodrich Co.*,[17] will allow the appeal to be based on the jurisdictional fact.

Removal of a state workmen's compensation case from an Ohio common pleas court to a federal district court was denied in *Decker v. Spicer Manufacturing Division of Dana Corp.*[18] Employers submitting to Ohio's compensation program were bound by its procedure. The court further stated that the workmen's compensation proceeding was not a civil action within the meaning of the United States Code so as to allow a transfer of the action to the federal court on the court on the ground of diversity of citizenship.[19]

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[14] 157 Ohio St. 62, 104 N.E.2d 450 (1952).

[15] 104 N.E.2d 716 (Trumbull Com. Pl. 1951).

[16] Pyle v. Industrial Comm'n, 139 Ohio St. 644, 652, 41 N.E.2d 857, 861 (1942); Drakulich v. Industrial Comm'n, 137 Ohio St. 82, 27 N.E.2d 932 (1940).

[17] 104 N.E.2d 90 (Summit Com. Pl. 1952).

[18] 101 F. Supp. 207 (N.D. Ohio 1951).

[19] 28 U.S.C. § 1441(a) (1948).